



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

May 22, 2008  
(House)

## STATEMENT OF ADMINISTRATION POLICY

### H.R. 5658 – Duncan Hunter National Defense Authorization Act for Fiscal Year 2009

(Rep. Skelton (D) MO and Rep. Hunter (R) CA)

The Administration appreciates the House Armed Services Committee's continued strong support of our national defense. However, the Administration has a number of significant concerns with H.R. 5658, which the Administration looks forward to addressing with Congress as the bill moves through the legislative process. If the final bill presented to the President contains any of the following provisions, the President's senior advisors would recommend that he veto the bill.

Base Realignment and Closure (BRAC): The Administration strongly supports provisions of the bill that authorizes full funding of the FY 2009 request to continue implementation of the 2005 BRAC round. The Administration strongly opposes, however, provisions that would impede implementation of BRAC-related work on the National Military Medical Center by subjecting it to further review. Furthermore, the Administration is concerned that eliminating the independent Commission from future BRAC rounds would affect the integrity of future BRAC processes.

Competitive Sourcing: The Administration strongly opposes provisions of the bill that would prohibit the Department of Defense (DoD) from considering public-private competition, unnecessarily limit the time provided to use this tool, and interfere with its ability to manage resources in the most cost-effective manner. The Department has saved taxpayers over \$7 billion as a result of competitions completed between FY 2001 and FY 2007, and expects these savings to grow to over \$10 billion after completion of all planned competitions initiated in FY 2008. Imposing a moratorium because of the potential impact on other Department initiatives, as proposed by section 325, is unnecessary and inappropriate as the Department already has authority and has used authority, under Circular A-76, to cancel competitions when in the best interest of the Department to do so.

Detainees: The Administration strongly opposes any requirement to video record all intelligence interrogations, which is impractical, burdensome, and runs the risk of significant unintended consequences in current and future military operations. The Administration also strongly objects to requirements that would prevent the Department of Defense or the Intelligence Community from conducting lawful interrogations in the most effective manner by restricting the process solely to government personnel; in some cases, a contract interrogator may possess the best combination of skills to obtain the needed information. Such provisions would unduly limit the United States' ability to obtain intelligence needed to protect Americans from attack.

Earmark Reform: The Administration strongly opposes the bill's provisions to block the President's recent Executive Order 13457, "Protecting American Taxpayers from Government

Spending on Wasteful Earmarks.” This Executive Order made clear that future earmarks would be honored only if included in the text of legislation, building on the President’s pledge in his State of the Union address to veto FY 2009 spending bills that do not cut the number and cost of earmarks in half from FY 2008 levels. The President took this unprecedented action on earmarks to bring more transparency and accountability to the budget process – just as the American people expect and deserve. The President’s goal is to reform the earmarking culture that often slips earmarks into bills at the last minute, without discussion or debate – which contributes to the wasteful and excessive pork-barrel spending the Administration has seen in recent years. Section 1431 of the bill is also constitutionally objectionable in that it seeks to prohibit the President from supervising Executive Branch agencies as to discretionary matters and to have agencies implement informal preferences of Congressional committees that are not enacted into law. Moreover, while Executive Order 13457’s objectives could still be accomplished by other means, this bill would cause confusion among agencies, inefficient use of resources, and unnecessary litigation potential.

Habeas Corpus: The Administration strongly opposes amendments that would modify or repeal habeas corpus provisions of the Military Commissions Act of 2006.

Iraq: The Administration strongly opposes any provision that would set an arbitrary date for beginning the withdrawal of American troops from Iraq without regard to conditions on the ground or the recommendations of commanders. Precipitous withdrawal from Iraq would not bring peace to the region or make our people safer here at home.

The Administration strongly opposes any amendment that would attempt to determine the legal effect or content of diplomatic agreements with Iraq before they are negotiated. In that regard, the Administration opposes any attempt to change long-standing legal traditions governing whether certain types of agreements may be concluded as executive agreements rather than as ratified treaties. Similarly, the Administration opposes any amendment that would establish a statutory policy that a Status of Forces Agreement (SOFA) between the U.S. and Iraq must include measures requiring the Iraqi Government to provide financial or other types of support for U.S. Armed Forces stationed in Iraq. Under the Constitution, the President has the discretion to initiate and conduct diplomatic negotiations. Congress cannot by statute establish the policy of the United States with regard to such negotiations in advance. Indeed, in this case, such a policy would threaten the ability of the United States to engage in dynamic talks with the Government of Iraq and would risk the timely completion of the status of forces agreement prior to the anticipated expiration of United Nations Security Council Resolution 1790.

Iran: The Administration also strongly opposes any amendments that would restrict the ability of the United States to deal effectively with the threats to regional security posed by the conduct of Iran.

Marketplace Barriers: The Administration strongly opposes section 801, which would retroactively change the rules of the KC-45 tanker competition, risk extended litigation, and could delay the Air Force’s ability to obtain equipment that is critical for combat and humanitarian relief operations. The Administration strongly opposes section 804, which would require DoD to prohibit procurements from certain entities based on possible foreign country subsidies to those entities and from firms that partner with those entities. Such prohibition would adversely affect our national defense by reducing competition for DoD acquisition,

driving up costs, and negatively impacting U.S. firms that team, partner, subcontract or form joint ventures with foreign entities, thereby discouraging the formation of such arrangements. The Administration also opposes sections 805 and 807, which could create barriers to trade for major defense acquisition programs through the application of a domestic industrial base evaluation factor and the consideration of employee benefit costs borne by foreign governments for contract work that is substantially performed abroad. To the extent that the procurements affected by sections 801, 804, 805, and 807 are covered by international agreements, those provisions could raise questions about U.S. compliance with international trade rules. Such provisions could jeopardize our military readiness; reduce competition; undermine our ability to acquire the best goods, services, and technologies for our warfighters at the best value for our taxpayers; adversely affect U.S. companies teamed with certain foreign entities; and provoke retaliation against U.S. companies within the global market. The cumulative effect of these provisions could adversely impact national security policy.

Missile Defense: The Administration strongly opposes the significant reduction of over \$700 million to our missile defense programs, including European Missile Defense, Airborne Laser, the Multiple Kill Vehicle, and the Kinetic Energy Interceptor. In addition, the Administration strongly opposes any potential amendment that would impose even more dramatic reductions to missile defense funding. The Administration is particularly concerned with the reduction of \$371 million for the European Missile Defense program, which could jeopardize the security of the United States and our European allies by delaying the fielding of missile defense assets to protect against the emerging missile threat posed by Iran.

Prevailing Wage in Guam: The Administration strongly opposes section 2828, which would apply Davis-Bacon Act prevailing wage requirements to any military construction authorized to be conducted on Guam. This provision is contrary to the Administration's longstanding policy of opposing any statutory attempt to expand or contract the applicability of Davis-Bacon Act prevailing wage requirements.

### **Other Concerns**

Civilian Employee Furloughs During Contingency Operations: The Administration opposes the requirement that DoD certify that it had exhausted all other measures before issuing furlough notices to its civilian employees on the basis of insufficient funds to continue operations. This requirement interferes with DoD's authority to efficiently and effectively operate bases and operations in a manner necessary to support combat units deployed as part of the War on Terror.

Clean Contracting Act Amendment: The Administration would strongly oppose burdensome and costly government-wide statutory requirements contained in the amendment entitled the "Clean Contracting Act of 2008". Many of these provisions would unnecessarily complicate ongoing administrative efforts to strengthen federal acquisition and grant activities and policies, especially a requirement to develop an unwieldy database of information on contractors and grantees that would unfairly expose them to possible Government-wide exclusion without appropriate safeguards.

Commander's Emergency Response Program (CERP): The Administration is concerned that section 1214 limits CERP obligations for Iraq in FY 2009 to twice Iraqi Government CERP obligations in FY 2008. Though the provision contains a waiver authority, it would be

administratively burdensome and significantly delay rapid implementation of CERP in Iraq, where it has proven critical to the success of our counterinsurgency operations. The Administration urges adoption of its request to authorize the Secretary of Defense to accept financial contributions to CERP in Iraq and Afghanistan from any person, foreign government, or international organization.

Constitutional Concerns: The Administration notes that various provisions of the bill raise constitutional concerns. The Administration looks forward to working with Congress to resolve these concerns.

The Administration is ready to work with Congress on a national defense authorization bill that would strengthen the Nation's Defense capabilities and support priorities in the War on Terror, so that the President can sign such a bill into law.

DDG-1000 Destroyer: The Administration opposes the reduction of \$2.6 billion for the third ship of the DDG-1000 program. This reduction would adversely affect the shipbuilding industry. Fully funding this destroyer is important in ensuring that the Navy has advanced capabilities in its future surface combatant force.

Defense Health Issues: The Administration is disappointed that the Committee language would not allow DoD to adjust TRICARE health fees and payments for retired military beneficiaries under age 65 and would not allow the implementation of any similar recommendations by the Task Force on the Future of Military Health Care. The Administration's suggested cost adjustments would make high-quality military health care more sustainable in the future by largely capturing the inflation increases that have occurred since cost sharing was first established in 1996. Not allowing the DoD to proceed with these changes will add \$1.2 billion in cost in FY 2009 and \$15.9 billion in cost from FY 2009 to FY 2013.

The Administration strongly opposes section 703, which prohibits all future military to civilian conversions in the medical care system. This provision eliminates the Secretary of Defense's ability to use civilian medical personnel for jobs away from the battlefield and at the same time use the converted military billets to enhance the strength of operating units. The Administration urges the Congress to repeal the existing ban on conversions to allow DoD to effectively manage its workforce.

Delay in Military Retirement Payments: The Administration opposes section 1004, which requires a one percent reduction in military retired pay payments in September 2013, with a one-time make-up payment in October 2013, which starts the next fiscal year. This provision puts military retired pay at risk, undermines the integrity of the retirement accrual process, and would set a precedent allowing increases in current mandatory spending with, at best, questionable future offsets. This budget gimmick, to satisfy congressional PAYGO scoring, would have been unnecessary had the Administration's requested changes in TRICARE fees been adopted.

Fluctuating Fuel Costs: The Administration strongly urges the House to authorize the Administration's request for the Refined Petroleum Products, Marginal Expense Transfer Account to ensure that the Department has sufficient funds to purchase fuel. Although the Congress has supported requests for supplemental funding to cover fuel price increases, it is increasingly difficult for the executive and legislative budget processes to keep pace with rising

fuel prices.

Glenn Amendment Waiver: The Administration encourages the House to include in its bill the authority for the President to waive the Glenn Amendment (also known as the Nuclear Proliferation Prevention Act) sanctions imposed on the Democratic People's Republic of Korea (DPRK) as a result of its 2006 nuclear test. Until these sanctions are lifted, the U.S. Government will have limited capacity to support disablement, dismantlement, and verification of North Korea's nuclear programs. Those sanctions prohibit, among other things, U.S. Government agencies from providing funding for the full range of disablement, dismantlement, and verification activities in North Korea. Providing other agencies, most notably the National Nuclear Security Administration of the Department of Energy, with the authority to fund such activities would ensure that the U.S. Government is able to take major concrete steps to advance the denuclearization of the DPRK.

Global Partnership Initiatives: The Administration appreciates the Committee's support for its proposals to build partnership capacity. The initiatives are critical to reduce stress on U.S. forces and the risks of terrorism and instability by helping U.S. partners counter these threats. The Administration urges the House to adopt in full the Administration's Building Partner Capacity provisions, which include the Secretary of State along with the Secretary of Defense as full partners in the exercise of these foreign assistance authorities, and in part are designed deliberately to meet Combatant Commander needs to address security priorities and support allies, coalition partners, and others in the War on Terror.

Implementing U.S. Counterinsurgency Operations: The Administration opposes the creation of an "executive agent" or Assistant Secretary for counterinsurgency operations in the Department of Defense. The Department maintains that its current organization is well suited for overseeing counterinsurgency operations. Adding a new executive agent will not significantly enhance the Department's capacity to successfully prosecute the War on Terror.

High Integrity Global Position System: The Administration opposes the Committee's elimination of the entire \$61.2 million requested for the High Integrity Global Position System (iGPS). Termination of the iGPS program would eliminate a development of much needed capability for the Special Operations Command in the FY 2010 timeframe.

Military Pay: The Administration strongly opposes sections 601 and 608 of the bill. The additional 0.5 percent increase in 2009 above the President's proposed 3.4 percent across-the-board pay increase is unnecessary, as are increased pay raises in the outyears. The 10th Quadrennial Review of Military Compensation reaffirmed that the overall military benefit package provides a good quality of life for servicemembers and their families. While the Administration agrees that military pay must be kept competitive, the 3.4 percent raise, equal to the increase in the Employment Cost Index, will do that. The cost of these provisions, above the President's Budget request, is \$293 million in FY 2009 and \$8.3 billion from FY 2009 to FY 2014.

Reliable Replacement Warhead: The Administration opposes the redirection of all funding requested for the Department of Energy National Nuclear Security Administration's Reliable Replacement Warhead program, which is needed to improve the security, reliability and maintainability of our aging nuclear stockpile.

Reporting Requirements: The Administration opposes provisions, such as sections 221, 323, 334 and 802, whereby DoD funds and administers specific studies by Federally Funded Research and Development Centers to be submitted directly to the Congress without Executive Branch oversight or comment. Analysis intended to be transmitted directly to Congressional Committees, without agency review, should be assigned to non-Executive Branch agencies such as the Government Accountability Office, the Congressional Budget Office or the Congressional Research Service. The Administration also opposes section 1064, which would impose a 60-day waiting period after a report to Congress on the effectiveness of certain proposed regulatory changes.

Transformational Medical Technology Initiative (TMTI): The Administration opposes the 17% funding cut to this major Quadrennial Defense Review initiative. The TMTI is developing flexible medical countermeasures capable to counter traditional, emerging, and genetically modified biological agents and pathogens. TMTI now is showing real progress toward development of effective countermeasures with multiple investigational new drug filings. This reduction will seriously degrade the Nation's ability to counter an advanced biological threat.

Unrequested Weapons Systems Additions: Several provisions would authorize increased funding for unnecessary weapons systems and programs, or would impose costly requirements, diverting resources from more urgent defense needs. Selected examples are:

- C-17 Transport Plane: The Administration strongly opposes the addition of \$3.9 billion for 15 C-17 transport planes. The current program of 190 C-17s, upgraded C-5s, enhanced prepositioning, and improved deployment facilities already provides a robust strategic mobility capability.
- F-22: The Administration strongly opposes the addition of \$523 million for advance procurement of long lead components for 20 additional F-22 aircraft in FY 2010. The current program of 183 F-22s, combined with the Joint Strike Fighter and upgraded legacy aircraft, provides a robust fighter capability for decades to come.
- F-35 Joint Strike Fighter Alternate Engine Program: The Administration opposes the addition of \$526 million to develop an alternative engine for the F-35 Joint Strike Fighter. Future savings are insufficient to offset the high up-front costs of this project and the additional burden of maintaining two logistical systems.
- Nuclear Powered Amphibious Ships: The Administration strongly opposes the Committee's requirement that the next generation of amphibious ships be constructed with integrated nuclear power systems. There is not enough analysis to demonstrate the feasibility of this extremely costly requirement, which will further strain the shipbuilding budget. Decisions about potential material solutions, including power systems, should be driven by the outcome of the Analyses of Alternatives conducted as part of the acquisition process.
- Navy Shipbuilding: The Administration opposes the unrequested adds to the Navy Shipbuilding program, specifically: \$1.8 billion to procure an LPD-17 transport dock

ship and \$722 million in advance procurement for a second Virginia-Class Submarine in FY 2010 that unnecessarily accelerates the program. These unrequested additions divert funds from higher priority acquisitions, adversely affecting Navy's surface combatant force structure and threatening the associated shipbuilding industrial base.

- Maintenance of Retired KC-135E Aircraft: The Administration opposes the requirement in Section 132 to maintain a minimum of 46 KC-135E aircraft in a nearly operational status. The President's budget fully supports the required force structure and this language would force the Air Force to maintain aircraft in excess to what it needs to meet current requirements.

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